

Before the
FEDERAL COMMUNICATIONS COMMISSION **RECEIVED**
Washington, DC 20554

JUL 31 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Multi-Association Group (MAG) Plan)	CC Docket No. 00-256 /
for Regulation of Interstate Services)	
of Non-Price Cap Incumbent Local)	
Exchange Carriers and)	
Interexchange Carriers)	

COMMENTS OF THE
COMPETITIVE UNIVERSAL SERVICE COALITION
ON PETITIONS FOR RECONSIDERATION

COMPETITIVE UNIVERSAL
SERVICE COALITION

Association for Local Telecommunications Services
Competitive Telecommunications Association
Dobson Communications Corporation
Nucentrix Broadband Networks, Inc.
Personal Communications Industry Association
Smith Bagley, Inc.
U.S. Cellular Corporation
Verizon Wireless
VoiceStream Wireless Corporation
Western Wireless Corporation
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COMPETITIVE UNIVERSAL SERVICE COALITION
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The Competitive Universal Service Coalition ("CUSC"), 1/ by its attorneys, hereby responds to the petitions for reconsideration of the Commission's Fourteenth Report & Order ("*Order*") 2/ relating to the Rural Task Force's ("RTF") recommendations in the captioned proceedings. CUSC strongly opposes the petition

1/ The Competitive Universal Service Coalition includes the following companies and associations: Association for Local Telecommunications Services; Competitive Telecommunications Association; Dobson Communications Corporation; Nucentrix Broadband Networks, Inc., Personal Communications Industry Association; Smith Bagley, Inc.; U.S. Cellular Corporation; Verizon Wireless; VoiceStream Wireless Corporation; Western Wireless Corporation; and the Wireless Communications Association.

2/ *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report & Order and Twenty-Second Order on Reconsideration in CC Docket No. 96-45 and Report & Order in CC Docket No. 00-256, FCC 01-157 (rel. May 23, 2001) ("*Order*").

filed by the Coalition of Rural Telephone Companies (“CRTC”), takes no position on the petition filed by the National Telephone Cooperative Association (“NTCA”), and concurs with some of the points made by the Illinois Commerce Commission (“Illinois Commission”).

I. INTRODUCTION AND SUMMARY

CRTC’s petition for reconsideration is clearly an effort to forestall the competitive provision of universal service in rural areas by wireless carriers and other new entrants. CRTC’s petition amounts to little more than an improper attempt to reverse long-settled FCC decisions that wireless carriers can be ETCs, and that competitive ETCs should receive the same support as incumbents. CRTC’s suggestion that the FCC reconsider and/or conduct extended follow-on proceedings on the rules for wireless ETCs would preclude or impede wireless ETCs’ legitimate efforts to receive the support for rural areas necessary to compete with rural ILECs already receiving support there. As such, CRTC’s petition is anti-competitive, potentially harmful to consumers, and at odds with the public interest.

Moreover, none of the specific points raised by CRTC has any merit. The FCC long ago resolved CRTC’s question about how to apply loop-based rules to quantify support for wireless ETCs (who do not use “loops” *per se*). No one – save CRTC – harbors any doubt about how these rules apply to wireless ETCs. There are also no grounds for revisiting or reversing the new rule requiring use of billing addresses to determine the service location of mobile customers served by wireless ETCs – in fact, this solution is the most reasonable one the FCC could have adopted. Finally, CRTC’s attack on the rules making support to rural telephone

company service areas fully portable flies in the face of one of the core pro-competitive tenets of federal universal service reform. In sum, the Commission should deny CRTC's petition.

As to the other petitions, CUSC neither supports nor opposes NTCA's requests for reconsideration and/or clarification of certain technical aspects of the new rules addressing the safety net additive, application of the safety valve to acquired exchanges, and the national loop cost expense adjustment. CUSC notes, however, that if Commission addresses NTCA's proposals, it should continue to ensure that the rules apply in an even-handed and competitively neutral manner to all ETCs.

Finally, CUSC strongly supports the Illinois Commission's proposal to eliminate the requirement that state commissions make certifications regarding each ETC's compliance with Section 254(e) of the Act. We also generally concur with the Illinois Commission's concern regarding excessive growth of the fund.

II. THE COMMISSION SHOULD REJECT CRTC'S ANTI-COMPETITIVE OBJECTIONS TO WIRELESS ETCs

The Commission should reject CRTC's effort to further forestall competitive entry by wireless carriers in rural areas. CRTC's petition constitutes an all-out assault on the ability of wireless carriers and other new entrants to receive universal service support in rural telephone company service areas. The Commission should deny CRTC's anti-competitive and anti-consumer petition, which effectively seeks to reverse the well-settled FCC decisions that wireless

carriers can be ETCs, and that competitive ETCs should receive the same support as incumbents.

CRTC's request that the Commission reconsider and examine more fully the rules adopted in the Order with respect to wireless ETCs – and thereby dismantle the rules designed to facilitate wireless ETC access to support in rural areas, or create uncertainty about those rules – rests entirely on three baseless arguments. First, CRTC suggests that reconsideration is appropriate because the supposed differences between wireline ETC “loops” and wireless ETC voice channels allegedly makes it difficult to calculate the amount of support wireless ETCs should receive. ^{3/} Second, CRTC argues that there is no rational basis for using billing addresses to establish service locations for wireless mobile customers when making universal service support determinations. ^{4/} Finally, CRTC launches a broadside challenge to the fundamental decision regarding portability of support to competitive ETCs, including wireless carriers. ^{5/} As we demonstrate below, each of CRTC's contentions is wholly without merit.

A. The Existing Rules for Quantifying Support Can Be Readily Applied to Wireless ETCs, as the FCC Has Already Recognized

It is obvious that a single wireless customer account, consisting of one telephone number and the ability for a customer to place or receive one voice

^{3/} CRTC at 6-8.

^{4/} *Id.* at 3-6.

^{5/} *Id.* at 11.

telephone call at a time, is the functional equivalent of an ILEC “loop.” The FCC long ago resolved the simple question of how to count a wireless ETC’s “loops” for purposes of USF support when it decided in the *Universal Service First Report and Order*, “not to require wireless providers to offer a single channel dedicated to a particular user at all times” because wireless providers “offer the equivalent of single-party service [through] a dedicated message path.” ^{6/} In other words, given the one-to-one correspondence of wireless dedicated message paths assigned to a single phone for any given call, each working wireless phone and its assigned phone number constitutes a single “loop” for universal service purposes. To the extent that CRTC’s petition implies that wireless carriers should not be qualified to become ETCs, CRTC’s stance is little more than an excessively tardy and unsupportable request for reconsideration of the *First Report and Order*’s determination to the contrary.

There is thus no merit to CRTC’s claim that the established framework is “unacceptably arbitrary” or lacking in “meaningful relationship” between the amount of universal service a wireless ETC provides and the number of eligible customers it serves. ^{7/} Were the Commission to re-open this issue, as CRTC suggests, it would create uncertainty about the sensible approach that is already in use by USAC and the handful of wireless ETCs presently receiving support

^{6/} *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8810, ¶ 62 (1997) (“*Universal Service First Report and Order*”).

^{7/} *Contra*, CRTC at 8.

(including some of CUSC's members). Rather, because there already exist "appropriate and meaningful concepts" for determining how much support wireless ETCs receive, there is no need for further FCC action on this issue, either on reconsideration or through further rulemaking.

B There is Ample Support for Using Billing Addresses to Determine the Service Location for Wireless ETCs' Mobile Customers

The Commission should reject CRTC's request for reconsideration of the new rule adopted in the Order that wireless mobile carriers use billing addresses to determine where each customer is located for purposes of receiving high-cost universal service support for service provided to that customer. As with CRTC's reconsideration request with respect to wireless "loops," CRTC's argument is little more than a thinly veiled attempt to undermine the Commission's prior determination that wireless carriers are qualified to be designated as ETCs. CRTC's position basically amounts to the claim that, because wireless customers are mobile, there is no way to determine whether the service provided to them in high-cost areas qualifies as "universal service." The net result of this position, however, would be that unless wireless providers somehow demonstrate that their customers use their service either exclusively or predominantly in an area for which USF support is needed, the wireless carrier cannot qualify as an ETC. 8/ The Commission should not be lured down this road.

8/ CRTC seems to be arguing that mobile wireless customers are not really located at their primary billing address, because there is a possibility they could "roam," or use their wireless phones in a different location. But this is no

CRTC's intent is clear from its argument that "the Commission has not articulated a conceptual approach that reasonably identifies [] the actual service area." 9/ This claim is not so much that the FCC has not adequately explained why a wireless ETC customer's address defines the customer's service location, as it is a complaint that there is no principled way to adopt *any* definition of "service location" for mobile wireless customers in the context of universal service. That this is CRTC's true objective is apparent by its failure to offer any principled alternative framework. 10/

While there may not always be a perfect fit between ILEC-centric FCC universal service rules and their application to wireless carriers, the rule adopted in the Order is clearly an appropriate solution for the Commission to achieve the competitive and technological neutrality that has come to be the

justification for denying universal service support, as CRTC would seem to suggest. To the contrary, customers of both ILECs and wireless carriers can use their services for both supported and non-supported services. ILEC customers can use their phones for non-supported services such as dial-up or xDSL Internet access, as well as for USF-supported services such as local phone calls, access to long distance, and so on. There is thus no reason to penalize wireless carriers just because their customers can use their cellphones for non-supported services (*e.g.*, "roaming" outside the "home" service area, Internet access, or other services) as well as for supported universal service. To do so, as CRTC appears to suggest, would violate the fundamental principles of competitive and technological neutrality.

9/ CRTC at 5.

10/ CRTC's inscrutable suggestion to "defin[e] the actual service area or relative proration across multiple service areas with respect to mobile customers that use their telecommunications services across a wide geographic area that may stretch across multiple service areas, and potentially across the nation," *id.*, is not worth serious Commission attention.

hallmark of federal universal service reform over the last five years. The rule adopted by the Commission correctly accepts that, in the vast majority of circumstances, a customer's billing address will coincide with the subscriber's home or business location, where the subscriber can use the service in the same manner as ILEC-provided universal service. Moreover, as the Commission recognized, enforcement mechanisms can be used to detect and prevent improper arbitrage. 11/ As such, there are no grounds for granting CRTC's request for reconsideration.

C. The Commission Should Uphold Its Decision to Make Support to Rural Telephone Company Service Areas Fully Portable

The Commission should summarily reject the throwaway challenge at the end of CRTC's petition to the portability of universal service support that has been fundamental to the Commission's pro-competitive universal service framework since the adoption of the Act. 12/ The statutory bases and policy reasons for making universal service support fully portable when transitioning to a competitive environment are well-documented and long-settled – and have been upheld by the courts – and thus need not be repeated here. 13/ Suffice it to say, the Commission

11/ Order, ¶ 183.

12/ CRTC at 11.

13/ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 617 (5th Cir. 2000) (“the Act requires that all universal service support be explicit [so] the program must treat all market participants equally – for example, subsidies must be portable”) (citation omitted); *id.* at 622 (“portability is not only consistent with predictability, but also is dictated by principles of competitive neutrality and the statutory command that universal service support be spent only for the provision, maintenance, and upgrading of facilities and services for which the support is intended”) (internal quotation omitted).

properly decided in the Order that all support for providing universal service to rural telephone company service areas would be fully portable to competitive ETCs at the level established for the incumbent. 14/

There is no merit to CRTC's claim that "[p]roviding support to a carrier using one technology based on the costs of [another] carrier's different technology is not competitive or technologically neutral[.]" 15/ To the contrary, providing the same amount of subsidy to all carriers serving a high-cost area is the only way to ensure competitive and technological neutrality. CUSC does not disagree with the concern implicit in CRTC's petition that basing a competitive ETC's support on that required by the incumbent could result in excessive subsidization (or insufficient subsidization, depending on the circumstances). However, as we have argued in the past, the proper remedy for this is not to deny new entrants the same amount of support available to incumbents – rather, it is to reduce the level of support to that required by the most efficient competitor. 16/ Until the Commission is prepared to take that step, the only proper course is the one followed in the Order, *i.e.*, keeping all universal service support fully portable, even that calculated based on ILEC costs. The Commission should therefore deny this aspect of CRTC's petition for reconsideration.

14/ Order, ¶¶ 114, 124, 134, 160, 178, 203.

15/ CRTC at 11.

16/ *E.g.*, CUSC RTF Reply at 25-26.

D. The Effects of Granting CRTC's Petition Would Be Devastating

In view of the foregoing, it is clear that CRTC's petition is profoundly anti-competitive and harmful to consumers. Even NTCA acknowledges that the primary competition to rural carriers providing universal service presently comes from wireless ETCs. ^{17/} NTCA recognizes, and CUSC concurs, that this "competitive pressure" encourages rural carriers to "keep their costs and prices low," and to avoid "investing unwisely in acquired exchanges." ^{18/} If the Commission were to credit CRTC's arguments and to initiate further proceedings that would delay or make uncertain wireless ETCs' receipt of support, which in turn would discourage wireless ETCs from entering rural markets, the results would be ruinous. Consumers in rural areas would lose the benefits of competition, including deployment of new technologies, innovative services and pricing plans, and opportunities to take service from more responsive providers. The Commission should decline to participate in CRTC's attempt to preserve its members' stranglehold on their high-cost markets, and to exclude the wireless and other competitive entrants that are just beginning to make inroads to serving high-cost customers. The Commission should unequivocally reject CRTC's petition for reconsideration.

^{17/} NTCA at 8.

^{18/} *Id.*

III. ANY ACTION THE COMMISSION TAKES IN RESPONSE TO NTCA'S PETITION SHOULD APPLY IN A COMPETITIVELY NEUTRAL MANNER TO ALL ETCs

CUSC takes no position on NTCA's requests for reconsideration and/or clarification of certain facets of the rules adopted in the Order regarding the safety net additive, application of the safety valve to acquired exchanges, and the national loop cost expense adjustment. CUSC notes, however, that with the exception of the issues addressed in CUSC's own petition for reconsideration, the Commission and the RTF were careful to ensure that the new rules treat incumbent and competitive ETCs in a competitively and technologically neutral manner. CUSC submits that, to the extent the Commission takes any action in response to NTCA's petition, such action must apply equally to all ETCs to sustain the Commission's efforts in the Order toward placing incumbents and new entrants providing universal service in rural areas on equal footing.

IV. STATE CERTIFICATION SHOULD BE ELIMINATED AND THE GROWTH OF THE FUND CONTROLLED MORE EFFECTIVELY, AS THE ILLINOIS COMMISSION RECOMMENDS

CUSC strongly agrees with the Illinois Commission's proposal to eliminate the rule requiring state commissions to certify that ETCs are using federal support only for the proper purposes. As the Illinois Commission points out, the rule "places an onerous burden on the states" by "put[ting them] in the position of having to enforce federal law . . . [and to make] representations on behalf of third parties." ^{19/} The rule also places an unnecessary burden on carriers to remind

^{19/} *Id.* at 10; *see* Order, ¶¶ 187-88.

states to file such certifications. CUSC's petition for reconsideration advocated elimination of the certification requirement with respect to competitive ETCs, in favor of having them self-certify their compliance, and we suggested that incumbent ETCs might be allowed to do the same. 20/ The Illinois Commission's objection to making the certifications only reinforces CUSC's position regarding the unsuitability of state commissions making certifications with respect to carriers over which they exercise little regulatory control. Therefore, CUSC supports this aspect of the Illinois Commission's petition.

Moreover, the Commission should consider simply eliminating the certification requirement altogether. Certifications are not only administratively burdensome for carriers, state commissions, and USAC, they are also wholly unnecessary. Regardless of whether certifications are filed, carriers are subject to Section 254(e) and are legally bound to comply with it. The certification requirement also creates an unfair procedural trap for new entrants unaccustomed to extensive regulatory burdens. It should be eliminated.

With respect to the other issues raised by the Illinois Commission, CUSC strongly agrees that the federal universal service fund should not be permitted to expand to a size that is greater than is necessary. 21/ While CUSC is

20/ CUSC at 6-7. CUSC submits that, if self-certification is sufficient for ETCs not subject to state jurisdiction designated pursuant to Section 214(e)(6) of the Act, *see* Order, ¶¶ 189, 193, self-certification is sufficient for ETCs designated by state commissions as well.

21/ *E.g.*, CUSC RTF Reply at 21-28.

willing to live with the RTF's consensus recommendations regarding funding size, CUSC shares the Illinois Commission's concerns that the RTF's approach does not do enough to control the future growth of the fund or to target support as efficiently as possible. In response to the Illinois Commission's concern that "it is likely that the funds will be used inefficiently and inappropriately," 22/ CUSC submits that one of the most effective tools for ensuring that funds are used efficiently and appropriately is to expose the incumbent carriers to robust competition.

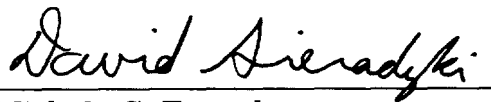
22/ Illinois Commission at 6.

V. CONCLUSION

For the foregoing reasons, the FCC should deny the Petition for Reconsideration filed by CRTC, grant the Illinois Commission's Petition for Reconsideration to the extent indicated above, and ensure that any action on NTCA's Petition for Reconsideration and/or Clarification maintains competitive neutrality.

Respectfully submitted,

**COMPETITIVE UNIVERSAL
SERVICE COALITION**

A handwritten signature in cursive script, reading "David L. Sieradzki", is written over a horizontal line.

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